IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9373 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI NATHABHAI PATEL

Versus

DISTRICT EDUCATION OFFICER

Appearance:

MR PS PATEL for Petitioner

MR IM PANDYA ASSTT GOVERNMENT PLEADER for Respondent No. 1

MR BA VAISHNAV for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/11/2000

ORAL JUDGEMENT

#. Heard Mr.P.S.Patel, learned advocate appearing on behalf of the petitioner and Mr.I.M.Pandya, learned AGP on behalf of the respondent No.1 so also Mr.B.A.Vaishnav, learned Advocate for respondent No.2.

#. In the present petition, RULE has been issued by this Court and interim relief granted by this Court on 30-12-1997 is made absolute.

#. By way of filing the present petition, the main prayer sought by the petitioner is that the respondents be directed to operate the select list for appointment to the post of Head Master which was prepared on 26th November, 1997 and give appointment to the petitioner as Head Master in D.M.B.P. High School, Bamna, Taluka Bhiloda District Sabarkantha.

#. In the present petition, the respondent No.2 has filed affidavit-in-reply which is on record and against that the petitioner has also filed affidavit-in-rejoinder. The brief facts of the present petition are that on 16th September, 1997 the District Education Officer gave an No Objection Certificate for appointment of a Head Master in the School run by the respondent No.2 Trust. On 23rd October, 1997, an advertisement was given in the newspaper for recruitment for the post of Head Master and the petitioner was one of the candidates out of 13 candidates who had applied for the post in question. On 26th November,97 the interview was held by the committee and the petitioner had appeared in the said interview. The petitioner has moved a petition stating that he apprehends that though he is at Sr.No.1 on the select list, he is not being appointed and it is likely that a person lower on the list may be appointed. Considering the reply filed on behalf of the respondent No.2 Trust, wherein it is clearly stated that in fact the petitioner is not at Sr.No.1 in the select list. However, on the date of interview, the petitioner had accompanied the place of interview with the two members of the Board who were part of the Committee and who had taken away the marksheet of assessment given to them for each candidate. They obtained signatures of the other two members of the management representatives on blank forms, called the clerk of the school and prepared their own statement, which is produced with the petition by the respondent No.2 Trust. On the basis of such incident and facts, the respondent No.2 school authority as written to the District Education Officer that the interview is required to be cancelled as the process has been unfair and request was made for issue of a fresh No Objection Certificate by letter dated 5th December, 1997. Thereafter, Civil Application has been filed by the respondent No.2 - trust with prayer that post of Head Master is lying vacant since 31-10-1997 and therefore, the District Education Officer be directed to give a

fresh No Objection Certificate and the school may be permitted to hold a fresh selection. In view of these facts and circumstances, the post of Head Master is lying vacant since 31st October, 1997 and the selection in question has been cancelled by the District Education Officer. Therefore, in such situation, it is directed to the respondent No.2 institution trust, to apply with necessary details for No Objection Certificate to the post of Head Master before the District Education Officer within 15 days from the date of receiving this order by the respondent No.2 - Trust. Considering the fact that the post of Head Master is lying vacant since 31st October, 1997 which ultimately adversely affects the career of the students of the school, it is also directed to the District Education Officer concerned to consider such application in light of all the facts and grant No Objection Certificate to the respondent No.2 trust to hold fresh selection for the post of Head Master within one months from the date of receiving such application from the respondent No.2 trust.

#. In view of this fact, no sooner a fresh No Objection Certificate will be given by the District Education Officer as directed above, the respondent No.2 trust is directed to hold fresh selection for the post of Head Master. However, Mr.P.S. Patel, learned advocate for the petitioner has submitted that since the claim of the petitioner is that the petitioner was at Sr.No.1 of the selection list and since the order of cancellation of selection issued by the District Education Officer is under challenged in this petition. Mr.Patel has also submitted that the petitioner has been rightly selected in the selection and no unfair practice has been adopted in the selection process and the petitioner was selected at Sr.No.1 of the selection list. Considering the submission of the learned advocate for the petitioner Mr.Patel, this Court is of the view that in view of the directions given by this Court as aforesaid, such contention of Mr.Patel, learned advocate for the petitioner is now not required to be entertained only on the ground that selection itself has been cancelled by the District Education Officer after considering the report from the respondent No.2 trust. Therefore in view of this fact, this court observe that it is open to the petitioner to apply afresh in response to the advertisement sought to be given by the respondent No.2 on receipt of No Objection Certificate from the District Education Officer as directed above, and the respondent No.2 trust is directed to consider the case of the petitioner strictly on merits without prejudice to the fact that the petitioner has approached this Court.

In view of aforesaid observations and directions, present petition stands disposed of accordingly. Directions accordingly. Rule discharged. Interim relief granted earlier stands vacated. No order as to costs.

Date : 21-11-2000 [H.K.Rathod, J.]

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